ASSOCIATED CREDIT CORP. SDN. BHD.

v.

FAHLUM DEVELOPMENT SDN. BHD. & WONG PHUAN FOO

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[ORIGINATING SUMMONS NO. 31-400-87]
15 SEPTEMBER 1990

LAND LAW: *Order for sale by public auction - Priority of registered chargee - Private caveat by purchaser - Equitable interest - Indefeasibility of title - National Land Code 1965, s. 340.*

The applicant (WBF) had applied for leave to intervene in the proceedings and to vacate or set aside the order for sale granted by the Court on 13 September 1989 in respect of the land which had been charged by the defendant to the plaintiff on 21 June 1984. The application, however, is only in respect of one title (H.S.(D) Ka 2296/83) which the applicant said she had purchased from the defendant on 24 May 1984. On 21 June 1984 she had lodged a private caveat on the land. She had also occupied the land since 1985. On 9 May 1986 the applicant had obtained a consent judgment against the defendant for the latter to execute a registrable transfer of the said land to her free from all encumbrances on or before 1 December 1986.

The issue before the Court was whether the plaintiff, as the registered chargee, had priority of title.

Held:
Dismissing the applicant's summons-in-chambers, in the light of s. 340 of the National Land Code and established authorities, although the applicant had obtained an equitable interest in the land prior to the registration of the charge, the registered chargee has an indefeasible title against the whole world, except where there has been fraud, misrepresentation, forgery or other causes as specified in the said provision.

[Applicant's application dismissed.]

Cases referred to:
Bank Bumiputra Malaysia Bhd. v. Mahmud Hj. Mohamed Din & Anor. [1989] 1 CLJ (Rep) 326
Joseph Manikam v. Towin Development Sdn. Bhd. & Ors. [1987] CLJ (Rep) 667
Overseas-Chinese Banking Corporation Limiiited v. Konsortium Utama Sdn. Bhd. [1989] 2 CLJ (Rep) 194

Legislation referred to:
National Land Code 1965, s. 340

For the plaintiff - Cik Ong Geok Lan; M/s. Joseph Tan & Tang
For the applicant - R. Naidu; M/s. R. Naidu & Co.

JUDGMENT

Abdul Malek Ahmad J:

The applicant had applied by summons-in-chambers filed on 1 February 1990 for leave to be an intervener in these proceedings and to vacate or set aside the Court order on 13 September 1989, which was the order for sale by public auction of the lands charged by the defendant to the plaintiff on 21 June 1984. The relevant lands were H.S.(D) Ka 2289/83 P.T. No. 49196,

H.S.(D) Ka 2291/83 P.T. No. 49198, H.S.(D) Ka 2295/83 P.T. No. 49202 and H.S.(D) Ka 2296/83 P.T. No. 49203 in the Mukim of Ulu Kinta and the order had been made after full arguments on 21 August 1989.

This application, however, is only in respect of H.S.(D) Ka 2296/83 P.T. No. 49203 as regards which the applicant in her supporting affidavit states had been purchased with a building on it by her from the defendant at a price of RM140,000 on 24 May 1984. The relevant sale and purchase agreement had been exhibited together with the receipt for that amount dated 11 May 1984 issued by the defendant. The applicant had been given possession of the property and had in fact resided with her family there since 1985. Since she had yet to receive the relevant title deed, the applicant had lodged a private caveat on it on 21 June 1984. Coincidentally and interestingly enough, this was on the date the land had been charged to the plaintiff. On 9 May 1986, she had obtained a consent judgment *vide* Ipoh High Court Civil Suit 374/85 against the defendant for the latter to execute a valid and registrable transfer of the said property to her free from all encumbrances on or before 1 December 1986.

Learned Counsel for the applicant had argued that since the applicant had purchased the property from the defendant on 24 May 1984, before they charged it to the plaintiff on 21 June 1984, the Court should decide in her favour. However, learned Counsel for the plaintiff had submitted that at the time of the charge on 21 June 1984 there were no encumbrances on the title and so the plaintiff was already the registered chargee on that date and had priority of title. She had added that the applicant should have entered the caveat before that date.

In the absence of any of the exceptions specified in s. 340 of the National Land Code 1965, it would have been a stronger case for the chargee although it would have made no difference if the sale and purchase had been executed after the charge had been registered as has been held in *Joseph s/o Manikam v. Topwin Development Sdn. Bhd. & Ors.* [1987] CLJ (Rep) 667 and by me in *Overseas-Chinese Banking Corporation Limited v. Konsortium Utama Sdn. Bhd.* [1989] 2 CLJ (Rep) 194.

This case is practically on all fours with *Bank Bumiputra Malaysia Bhd. v. Mahmud bin Hj. Mohamed Din & Anor.* [1989] 1 CLJ (Rep) 326 where the Court had ruled that although the intervener who had purchased the relevant property had obtained an equitable interest prior to the charge, the chargee being a registered chargee, had an indefeasible title against the world under the said s. 340 of the National Land Code 1965 except where there has been fraud or misrepresentation to which the chargee was a party or privy, or where the registration was obtained by forgery or by means of an insufficient or void instrument, or where the title or interest was unlawfully acquired in the purported exercise of any power or authority conferred by any written law, which exceptions certainly were not applicable both in that case and here.

In the event, I had dismissed the applicant's summons-in-chambers with costs.

Also found at [1990] 2 CLJ 952